

7051

C. Hammer, Jr.

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20543**

**FILE:** B-192319

**DATE:** July 19, 1978

**MATTER OF:** Engineering Service Systems, Inc.

**DIGEST:**

1. Protest alleging solicitation deficiencies which is filed after bid opening is untimely and not for consideration.
2. Failure to provide bid bond, as required in solicitation, is a material omission rendering bid nonresponsive.

Engineering Service Systems, Inc. (Engineering) protests the bid bond requirement in invitation for bids (IFB) No. PBS-BMD-78-0052, issued by the General Services Administration (GSA), and the rejection of its bid because of its failure to post a bid bond.

Engineering alleges that the requirement is unusual, unduly restrictive, and "flies in the face of the free enterprise system."

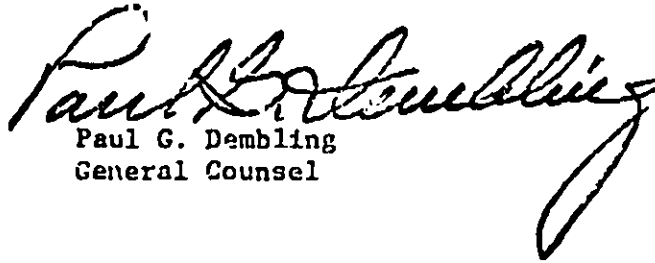
These allegations basically relate to deficiencies in the solicitation. Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1977), provides that a protest based upon an alleged impropriety in any type of solicitation, which is apparent prior to bid opening or the closing date for receipt of initial proposals, must be filed "prior to bid opening or the closing date for receipt of initial proposals." As Engineering protested after bid opening, the protest is untimely and not for consideration on the merits. Universal Building and Maintenance, Inc., B-190996, January 31, 1978, 78-1 CPD 85.

We point out, however, in response to the protester's suggestion that bid bonds should be required only after bid opening, that the purpose of a bid bond is to provide a guarantee to the Government that a bidder will not withdraw its bid during the stated acceptance period and will accept award if tendered. Obviously, if the bond were not required until after bid opening, there could be a period of time after opening when the bidder, without penalty, could withdraw its bid. This would be inconsistent with the competitive bid system. See 38 Comp. Gen. 532 (1959).

B-192319

In this case, since the solicitation contained a bid bond requirement, and since such a requirement is regarded as a material part of the invitation, the contracting officer could not waive Engineering's failure to comply with the requirement. Thorpe's Mowing, B-181154, July 17, 1974, 74-2 CPD 37.

The protest is dismissed.

  
Paul G. Dembling  
General Counsel